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OCT 12 1956
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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 508

CLAUDIA WALKER, as Administratrix of the Estate of Mrs. Lillie Maybelle Waller Walker, Deceased,
Appellant,

vs.

STATE OF CALIFORNIA, GOODWIN J. KNIGHT, as Governor of the State of California, EDMUND G. BROWN, as Attorney General of the State of California, STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA, JOHN M. PEIRCE, as Chairman of the State Board of Control of the State of California, ROBERT KIRKWOOD and ARTHUR F. HENNING, as Members of the State Board of Control of the State of California,
Respondents.

Jurisdictional Statement

CLAUDIA WALKER,
P. O. Box 3189
San Francisco 19, California
Appellant in Propria Persona

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STATE OF CALIFORNIA, GOODWIN J. KNIGHT, as Governor of the State of California, EDMUND G. BROWN, as Attorney General of the State of California, STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA, JOHN M. PEIRCE, as Chairman of the State Board of Control of the State of California, ROBERT KIRKWOOD and ARTHUR F. HENNING, as Members of the State Board of Control of the State of California,
Respondents.

Jurisdictional Statement

Appellant presents herewith her Jurisdictional Statement with regard to this appeal.

OPINION OF THE TRIAL COURT

The opinion of the Sacramento County Superior Court (C.T. 103) stated:

1. "The main feature of the pleading upon which reliance seems to be predicated is to the effect that a Judge of the Superior Court had ordered an adoption of the plaintiffs intestate and she had thereby been disinherited and deprived of property she would otherwise have inherited or acquired, and she seeks damages by reason thereof * * * A casual reading of the amended complaint will show that it states no cause of action against the State of California * * *"

2. "Neither are the statements set forth in the affidavit filed sufficient to excuse the failure to have a summons issued according to the provisions of Sec. 581a of the C. C. P., unless it is to be held that the fact that the original plaintiff passed away before the year stated in said section had elapsed, extended the right to have a summons issued after that period."

3. "It is true as stated by counsel for plaintiff that there is no California case in point."

4. "Citing *Dupuy v. Shear*, 29 C. 238:
'In 1860 section 23 was amended * * * the party upon filing his complaint and paying the costs has a right to it and no order by the court or judge is required * * * a summons to be thereafter issued as a matter of absolute right, must issue by virtue of the provisions of the section as amended, because there is no other provision authorizing the issue of any summons.'"

5. "Citing 167 A.L.R. 1095:
'* * * referred to Section C.C.P. 581a: "* * * the statute is mandatory and the court is under the positive duty of dismissing the action."'"

DECISION OF APPELLATE COURT

The decision of the Third District Court of Appeal (Appendix, Petition for Hearing by the Supreme Court) (142 A.C.A. 1 at page 133) stated:

1. "On July 26, 1951, appellant's mother commenced action to recover damages from the state * * * on the ground that in 1880 the then judge of the Superior Court of Solano County, acting as agent of the state, fraudulently conspired to, and did, permit her adoption and thereby deprived her of her vested interest in her deceased mother's estate. Appellant's mother alleged that at the time of the adoption she was only two years old, that no guardian ad litem was appointed to represent her interests and that the required publication of the notice of the proceedings was not made. It was further alleged that the Superior Court judge with notice of the vested property rights of appellant's mother, fraudulently permitted her adoption and thereby deprived her of her heritage in violation of her constitutional rights. Appellant's mother sought not only damages for the alleged taking of her property without due process of law but also for personal injuries alleged to have been suffered due to the negligence of her adopting parents * * * upon this appeal from such judgment appellant strenuously argues that the trial court abused its discretion and deprived her of her constitutional rights by dismissing the action."

2. "On July 26, 1951, appellant's mother commenced this action * * * Appellant's mother died July 15, 1952. The summons had not issued. On October 23, 1953, appellant was appointed the administratrix of her mother's estate and on October 26, 1953, she was substituted as the plaintiff in the present action. She filed an amended complaint wherein she alleged that due to circumstances beyond her mother's control she had been unable to file a statutory $500 undertaking required in an action against the state; and that up to

the filing of the amended complaint appellant herself had suffered the same disability. On October 29, 1953, appellant filed the required statutory bond and had summons issued. Service thereon on respondents was completed on November 2, 1953. On November 5, 1953, respondents filed a notice of motion to dismiss on the ground that summons was not issued within one year after the filing of the complaint * * * Respondents' motion was granted April 23, 1954, and a judgment of dismissal entered."

3. "None of the reasons advanced by appellant for the failure to have summons issued promptly, such as the illness and death of her mother, lack of funds, and inability to obtain diligent counsel can serve to prevent a dismissal of the action. The statute is mandatory * * * The trial court had no discretion in the matter. By statutory command, it was compelled to dismiss the action."

4. "Respondents did not make a general appearance. * * * Under these circumstances, extending the time to plead did not change the special appearance into a general appearance upon the part of respondents."

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IS INVOKED ON THE FOLLOWING GROUNDS

1. The issue of the appeal from the judgment of the Sacramento County Superior Court is the granting by said court of defendants' and respondents' motion to dismiss this action under C.C.P. 581a, after filing of amended complaint and posting of bond and after issuance of summons under the amended complaint, which was predicated on the posting of bond, and after service on defendants of amended complaint and summons issued under amended complaint substituting a new party plaintiff and new parties defendant.

The amended complaint is for damages against the State of California—authorized by Section 16041 of Government Code—based on discovery of fraud in 1949 that plaintiff in 1880 (two years following her mother's death at the time of her birth on September 22, 1878) had been deprived of valuable property and property rights resulting from her adoption—that the adoption was a third-party contract, which resulted in her dispossession of property and the nullification of valuable probate homestead property rights and in the deprivation of her personal liberty—all contrary to the 13th and 14th amendments to the U. S. Constitution, and for which no remedy at law for the recovery of said property or property rights or losses was provided, while at the same time she was estopped by law from asserting her claim to the lost property and property rights by reason of the operation of the adverse possession law (even though title to the said property has never passed through the probate court since her deceased mother's death as required by law) which vested title in a community of holders and thereby constituted a taking in the nature of eminent domain without just compensation.

The prayer of the amended complaint calls for reimbursement for $1,000 representing her share of her deceased mother's estate in 1878; $25,000 representing the value of the property covered by her probate homestead rights at the time of her majority in 512 acres of land currently valued at about $500,000; $20,000 figured at $1,000 per year during her minority representing lost farm income and/or support and education; and $46,000 in losses for subservience and personal injuries suffered at the hands of her adopted parents.

The facts of the case were conceded by the State Board of Control of the State of California at the hearing on A.B.

3394 before the Assembly Ways and Means Committee of the California State Legislature, which claim was denied because the committee spokesman said if they considered any claim based on the adverse possession law it would bring forth a volume of claims which would bankrupt the state.

Claim 4534 to the State Board of Control was priorly denied on a false legal premise, namely that the State had no liability for actions of a Superior Court Judge acting in a judicial capacity—they cited two cases of malicious prosecution in criminal actions, obviously not in point for the reason that the adoption contract was not a judicial proceeding and the judge was not acting in a judicial capacity but as agent of the state.

The dismissal under C.C.P. 581a prevents trial upon the merits.

2. The judgment of the trial court was entered April 29, 1954. The decision of the District Court of Appeal was filed June 7, 1956. Appellant's petition for rehearing was denied July 2, 1956. Appellant's petition for hearing by the Supreme Court was denied August 1, 1956. Notice of appeal to the Supreme Court of the United States was filed in the District Court of Appeal, Third Appellate District of the State of California, service being made upon Respondents by mail, on August 15, 1956.

3. The statutory provision believed to confer on the U. S. Supreme Court jurisdiction of the appeal is 28 U.S.C. 1257 (2) and (3) which provide for review by the Supreme Court of state court judgments.

4. The following cases are believed to sustain the jurisdiction.

The judgment has been finally determined in the state court by the denial of the Petition for Hearing by the

Supreme Court of the State of California on August 1st, 1956; therefore, the litigation in the state courts has been terminated; and judgment has been finally entered n remittitur from the appellate court to the trial court. The Supreme Court of the State of California is the highest court in which decision could be had.

Since the above facts appear from the record, cases are cited as to the following:

A federal question constituting an appropriate ground for review by the Supreme Court is in the case and was properly drawn in question when the case was presented for decision and was so directly involved that the court could not have given judgment without deciding it. The record shows that the federal question involves a right which was set up in the proper manner and time.

"If a federal question is involved, a final remedy is appeal to the U. S. Supreme Court."

Bandini Pet. Co. v. Sup. Ct., 284 U.S. 8, 52 S.Ct. 103;
Rescue Army v. Mun. Ct., 331 U.S. 549, 67 S.Ct. 1409.

"Every question arising under the Federal Constitution may, if properly raised in a state court, come ultimately to the U. S. Supreme Court for decision."

Hague v. CIO NY, 59 S.Ct. 954, 307 U.S. 404.

"A suit 'arises' under a federal law, if it involves a dispute or controversy respecting the validity, construction or effect of such law, upon the determination of which the result depends."

Shulthis v. McDougal, 225 U.S. 561;
Gully v. FNB in Meridian, 229 U.S. 109.

"It is a familiar doctrine that the prohibition of a federal statute may not be set at nought or its benefits denied by state statutes or state common law rules * * * to the Federal statute and policy conflicting state law and policy must yield."

Sola Elec. Co. v. Jefferson Elec. Co., 317 U.S. 176;
Const. Art. VI cl. 2;
Awatin v. Atlas Exch. Bank, 295 U.S. 209;
Deitrich v. Greaney, 309 U.S. 190, 200-1.

"In determining whether the requisite Federal question is present in the state decision and was decided by the state court, the supreme court will look to the necessary effect of the state decision."
Woodruff v. Miss., 162 U.S. 291, 16 S.Ct. 820;
Huntington v. Attrill, 146 U.S. 657, 13 S.Ct. 224.

Denial of due process of law under the 14th amendment is a Federal question.

"A state is free to regulate court procedure in accordance with its own conception of policy and fairness without infringement of this amendment, unless some fundamental principle of justice is violated."
Snyder v. Commonwealth of Mass. 54 S.Ct. 330, 291 U.S. 97.

"A mere error in judgment by the state court in misapplying the law or adjudging the facts but adjudging nothing obnoxious to the constitution does not make its judgment reviewable, unless the error is so gross and the decision so arbitrary or fraudulent as to deny due process of law or the equal protection of the laws."
Baker v. Drueselow, 263 U.S. 137, 44 S.Ct. 40;
FNB in St. Louis v. Mo., 263 U.S. 640, 44 S.Ct. 213.

"If compensation for private property taken for public use is an essential element of due process of law, then the final judgment of a state court under the authority of which the property is in fact taken is to be deemed the act of the state within the meaning of the amendment."
Chic. etc. Ry. Co. v. Chic., Ill., 17 S.Ct. 581, 166 U.S. 235.

"A state's sovereignty over real property within its boundaries is supreme, and it may establish rules of law and procedure affecting transfers and settlement of title without violating the federal constitution, provided that property is brought under control of its court and reasonable opportunity to be heard is given all interested parties."

Heck v. Nicholas, C.C.A. Neb. 6 F.2d 10.

Denial of equal protection of the laws under the 14th amendment is a Federal question.

"State action within this amendment refers to assertions of state power in all forms and when the effect of that action is to deny rights subject to protection of this amendment it is the obligation of the U. S. Supreme Court to enforce the constitutional commands."

Shelley v. Kraemer, Mich. & Mo. 68 S.Ct. 836, 334 U.S. 1.

"Private rights secured by constitution may not be invaded by means of legislative regulations and regulations must operate with substantial fairness upon all persons similarly situated."

State ex rel Fulton v. Ives, 167 So. 394, 123 Fla. 401.

The denial of privileges and immunities under the 14th amendment is a federal question.

"Subject to the restrictions of the federal constitution, the state may determine the limits on jurisdiction of its courts."

Chambers v. Baltimore etc. R. Co., 28 S.Ct. 34, 207 U.S. 142.

"Privileges and immunities of citizens in state which may not be abridged are confined to fundamental privileges and immunities * * * and include privilege to institute and maintain actions in courts of state."

Charles v. Fischer Baking Co., 182 A. 30, 14 N.J. Misc. 18 affirmed 187 A. 175, 117 N.J. Law 115.

"A judgment of a state court in any cause wherein any 'title, right, privilege or immunity' is specially set up or claimed under the constitution is reviewable by the Supreme Court on certiorari. The statute under consideration applies to any right, title, privilege or immunity asserted under and arising directly out of the Federal Constitution or predicated thereon."

Coleman v. Miller, 307 U.S. 433, 59 S.Ct. 972.

"A claim that a state statute impairs the obligation of contract is an appeal to the U. S. Constitution."

Atlantic Coast L. R. Co. v. Phillips, 67 S.Ct. 1584, 332 U.S. 168.

"Impairment of obligation of contract is forbidden by Article I, Sec. 10 of the Constitution."

"The provision of proceeding in forma pauperis has been contained in the statute from the time of the first judiciary act."

Coleman v. Miller, 307 U.S. 433, 59 S.Ct. 972;

Baltimore & P. R. Co. v. Hopkins, 130 U.S. 210, 9 S.Ct. 503.

The record shows that the validity of C.C.P. 581a, as applied to this particular case involving matters arising from violation of the U. S. Constitution, was drawn in question.

"Except in matters governed by the federal constitution or by acts of congress, the law to be applied in any case is the law of the state."

Erie R. R. Co. v. Tompkins, 304 U.S. 64.

"Clearly federal and not state law will govern the construction of a federal statute or a federal rule of policy in the state and federal courts alike."

Sola Elec. Co. v. Jeff. Elec. Co., 317 U.S. 173;

Mitchell v. Flintkote, 185 F.2d 1008.

"The validity of state legislation is drawn in question where the challenge is directed at the validity

under federal law of the statute as it is construed or applied or enforced in the particular instance or against the particular transaction,

Fiske v. Kansas, 274 U.S. 380, 47 S. Ct. 655;

Fox R. Paper Co. v. R. R. Com. of Wisc., 274 U.S. 651, 47 S.Ct. 669;

Aetna Life Ins. Co. v. Dunken, 266 U.S. 389, 45 S.Ct. 129;

Eureka Pipe Line Co. v. Hallanan, 257 U.S. 265, 42 S.Ct. 101;

United Fuel Gas Co. v. Hallanan, 257 U.S. 277, 42 S.Ct. 105;

and where the statute as administered and justified by the state courts is challenged as repugnant to federal law."

Standard Oil Co. of Cal. v. Johnson, 316 U.S. 481, 62 S.Ct. 1168;

James Stewart & Co. Inc. v. Sodrakula, 309 U.S. 94, 60 S.Ct. 431;

Senn v. Tile Workers Prot. Un. Loc. 5, 301 U.S. 468, 57 S.Ct. 857;

Myles Salt Co. v. Bd. of Com. of Iberia & St. Marie Drain. Dist., 239 U.S. 478, 36 S.Ct. 204.

"If the challenged state statute as applied in the particular case did not deny due process or infringe constitutional right, it is immaterial how the state court construed it in prior cases"

Atlantic Coast Line R. Co. v. Ford, 287 U.S. 502, 53 S.Ct. 249.

"In a case involving the question whether a state statute as applied was invalid as in conflict with the commerce clause of the Federal Constitution, it was held that a claim that the statute was invalid only as applied to plaintiff's transaction was sufficient to entitle plaintiff to review as of right, the court concluding that the state court applied and enforced to plaintiff's disadvantage a state statute which plaintiff

seasonably insisted as so applied and enforced was repugnant to the constitution and void."

Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, 42 S.Ct. 106.

5. The text of C.C.P. 581a is set forth:

"No action heretofore or hereafter commenced shall be further prosecuted, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced must be dismissed by the court in which the same shall have been commenced, on its own motion, or on motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have issued within one year, and all such actions must be in like manner dismissed, unless the summons shall be served and return thereon made within three years after the commencement of said action, except where the parties have filed a stipulation in writing that the time may be extended. But all such actions may be prosecuted, if appearance has been made by the defendant or defendants, within said three years in the same manner as if summons had been issued and served; provided, that, except in actions in partition or to recover possession of, or to enforce a lien upon, or to determine conflicting claims to, real or personal property, no dismissal shall be had under this section as to any defendant because of the failure to serve summons on him during his absence from the State, or while he has secreted himself within the State to prevent the service of summons on him."

"All actions, heretofore or hereafter commenced, must be dismissed by the court in which the same may be pending, on its own motion, or on the motion of any party interested therein, if summons has been served, and no answer has been filed, if plaintiff fails, or has failed, to have judgment entered within three years after service of summons, except where the parties

have filed a stipulation in writing that the time may be extended."

West's Annotated California Codes, Code of Civil Procedure, Volume 16, page 98.

THE QUESTIONS PRESENTED BY THE APPEAL

The record and the opinion and decision draw in question the constitutional validity of C.C.P. 581a as applied to this particular case, and the application of said statute to this case is repugnant to Amendments 13 and 14 of the U. S. Constitution. The decision was in favor of the validity of the statute as to this case and because this case involves constitutional issues, the effect of the decision is to subordinate the 13th and 14th amendments of the U. S. Constitution to the state statute.

By reason of the necessity for brevity in this statement, appellant includes herein by reference for consideration by the Court on this appeal all facts, arguments, defenses, questions, presented in the amended complaint, the affidavit and memorandum in opposition to Respondents' motion to dismiss, the affidavit concerning the withdrawal of Attorney Winton, the AOB, ACB, Petition for Rehearing and Petition for Hearing by the Supreme Court which bring in question the matter of a federal question and the constitutional validity of C.C.P. 581a as applied to this case.

In effect, the decision does these things:

1. It refuses to recognize the fact that this case presented an exception to the rule, since it concerned the prohibited violation of rights protected by the 13th and 14th amendments to the U. S. Constitution (as set out in AOB 51 Argument IX and ACB 52 and which arguments are unrefuted and unanswered by Respondents), which exception is recognized in the uniformity of decisions rule to

the effect that state law will be applicable *except in matters governed by the Federal Constitution or by acts of Congress* and thereby denies this appellant access to the courts, which is a federally protected right.

2. It confirms the prohibited violation of original plaintiff's liberty and property rights without due process of law and denies privileges and immunities of securing damages therefor which is a constitutionally protected right.

3. It impairs the obligations of contract which the state assumed when it confirmed the third-party adoption contract which deprived said original plaintiff of said rights without due process of law, which is contrary to the Constitution.

4. It confirms the taking of original plaintiff's property and property rights without just compensation, which constitutes a taking in eminent domain without just compensation by reason of the fact that by operation of the adverse possession law plaintiff is estopped from asserting the rights of which she was deprived without due process of law, and deprives this appellant of property without due process of law. It forbids the trial of the action for the reason of state-created laches, when the defense of laches does not apply in this situation of taking of property without just compensation in the nature of eminent domain (18 Cal. Jur. 2d at 102).

5. It denies equal protection of the law by the application of C.C.P. 581a to a situation where the court refused to and could not allow issuance of summons in a situation where plaintiff (who was receiving Old Age Assistance partially contributed from Federal Government Funds) was financially unable to post a $500 cash bond in a situation where she did not have an attorney and where the bond could not be posted in an action in forma pauperis accord-

ing to the statement of the Superior Court Judge, and the posting of which bond was necessary to the issuance of summons—which refusal to issue summons by the judge caused the delay—when the object of the statute is only to penalize a litigant who without just cause neglects to issue summons. Proceedings in forma pauperis is a right of due process protected by federal law.

6. It denies to original and present plaintiff, this appellant, equal protection of the laws in refusing to recognize the proper legal defenses to the motion which were presented by this appellant and which were entitled to recognition in any and all legal proceedings. These defenses are fully set out in Appellant's Opening Brief and include the following legal facts with their resulting legal effects: There was a suspension period by reason of the failure to post statutory bond; defendants made a general appearance in the action and defaulted in the action; the Court refused to exercise its legal discretion so far as reasons for delay in issuance of summons were concerned in situations where due process, equal protection of the laws and immunities and privileges protected by the U. S. Constitution were involved; the death of original plaintiff suspended jurisdiction during vacancy in administration; the amended complaint referred with its summons back to the date of filing the original complaint and cured any and all procedural defects—all of which defenses made the operation of C.C.P. 581a invalid.

A CONCISE STATEMENT OF THE CASE

In 1949, appellant's mother discovered that in 1880 by reason of her adoption she was deprived of valuable property and property rights. The adoption was a third-party contract, of which appellant's mother was the beneficiary. The contract was approved by the Judge of the Probate

Court of Solano County, who was her father's attorney, acting as agent of the State of California.

There was no due process of law in any respect, as guaranteed by the 14th amendment to the U. S. Constitution, so far as the rights of the child were concerned, and the California State Law was violated in that the measure of the authority was at the least the "best interests of the child", which "best interests" were not served by depriving the child of her federally protected rights.

Prior to the contract, the child had a vested right in her deceased mother's personal estate, and she had a vested right of support and education from the family property, and she had a privilege of probate homestead which would have resulted in title to one-third of one-half of 512 acres of valuable wheat land in Solano County, California, which was fully improved with a home and barns and fences etc., and she had a right to receive therefrom a share of the income of said property in the estimated amount of about $1,000 a year. She was removed from possession and occupancy, so far as her vested interests were concerned, and the adoption negated her probate homestead rights in the family property.

On discovery of the fraud, she sought legal ways and means of recovering some of the loss from the lost property to meet the needs of her old age and get off the old age pension, but she was estopped to make any claims to the lost property by reason of the running of time under the adverse possession law which fully vested title in a community of holders, in spite of the fact that title has never been cleared through the probate court. Her only recourse was to seek damages from the State.

There is adequate documentary evidence and the fact is that she was deprived of her liberty and her property

and property rights without due process of law, contrary to the U.S. Constitution and this was accomplished by the adoption contract which caused her a lifetime of damages.

Appellant's mother filed a complaint July 25, 1951, and she died July 15, 1952. Appellant as her mother before her, had been unable to issue summons because the court refused to allow issuance of summons until bond was posted and neither were financially able to post the said bond, and the court said the bond could not be posted in forma pauperis, and when appellant finally secured an attorney he delayed for his own reasons and time ran until October 29, 1952, when an amended complaint was filed, bond was posted, and summons issued under the amended complaint, and was served on the defendants. The action was stopped by the defendants' motion to dismiss, which resulted in a judgment and order of dismissal. Appellant appealed to secure reversal of the judgment, in order that the action might proceed to trial upon the merits and to secure reimbursement for the losses.

The federal questions were raised in the amended complaint and in appellant's affidavit in opposition to the motion to dismiss setting forth reasons for delay. In both documents, it was stated that the action was based on plaintiff's claim that she had been deprived of her liberty and property rights without due process of law contrary to the 13th and 14th amendments to the U.S. Constitution. In the amended complaint was set forth the adoption contract, a description of the property involved and the specific property rights of which she was deprived. In the affidavit the disabilities which caused the delay were explained in detail. In the Memorandum of Points and Authorities in opposition to the motion, reference was made to the Federal Area of Jurisdiction quoting from Federal Rules of Civil Procedure

41-b to show that in a case where federal matters were concerned the plaintiff should be accorded the right to present the case upon the merits with the defendant being allowed to present motion for dismissal, the motion to be considered in view of the substantive facts of the case.

The trial court stated that the amended complaint stated no cause of action against the state, and that the statements in the affidavit were not sufficient to excuse failure to issue summons within one year and cited one case to show that a summons was issued as a matter of right where the complaint was filed and the costs paid and that no order of court was required. The trial court completely ignored the fact that a federal question was involved.

In the Opening and Closing Briefs presented to the Appellate Court, repeated mention was made of the fact that the case involved constitutional issues concerning the deprivation of rights without due process of law. In AOB 51 Argument IX and ACB 52, reference was made to the inapplicability of C.C.P. 581a to the case by reason of the fact that federal questions were involved, in addition to the other defenses.

The Appellate Court in its decision recognized the fact that constitutional issues were involved but they held that dismissal was mandatory because summons did not issue in one year, regardless of the defenses presented in the briefs, and they held that respondents did not make a general appearance. The court did not mention the arguments presented that C.C.P. 581a should not apply because of the fact that a federal question was involved.

In the petition for rehearing before the Appellate Court and in the petition for hearing by the Supreme Court, the defenses and the matter of a federal question were again raised.

As indicated above, the courts made no effort to apply federal law or federal policy to the case, although federal questions are involved, and they evidently gave no consideration to the fact that the effect of their decision would be contrary to federal law. The effect of the opinion and decision, as stated above is to subordinate the provisions and prohibitions of Amendments 13 and 14 to the U. S. Constitution to C.C.P. 581a, by denying trial upon the merits and thereby approving the acts prohibited by the said amendments.

The effect of the decision is to deny this appellant access to the courts for trial upon the merits and the right to secure damages for deprivation of liberty and property rights without due process; to impair the obligations of the maker of the contract namely the State of California; to prevent this appellant from securing just compensation for the property taken from her mother and vested in others without due process; to deny this appellant equal protection of the laws by applying C.C.P. 581a to a situation where the court refused to issue summons because of financial inability of appellant's mother (who was on old age assistance derived from Federal Funds and who was denied the privilege of forma pauperis because of the bond factor) to post bond where in actuality the section is intended to penalize persons who through neglect fail to issue summons; and to deny to this appellant equal protection of the laws in refusing to recognize the proper legal defenses of suspension caused by failure to post bond and death of plaintiff, general appearance, the exercise of legal discretion of the court to excuse the delay, and the effect of the amended complaint.

In this case, a federal question was involved, the constitutional validity of C.C.P. 581a so far as this case was con-

cerned was brought into question, and there are involved here matters concerning the denial of due process of law, equal protection of the laws and immunities and privileges protected by the 14th amendment to the U. S. Constitution.

GROUNDS UPON WHICH IT IS CONTENDED THAT FEDERAL QUESTIONS ARE SUBSTANTIAL

1. The facts as alleged in the amended complaint show that plaintiff was deprived of liberty and property rights without due process of law by the approval of the State of California of an adoption contract, which resulted in her bodily removal from occupancy and possession of property in which she had an interest, and that the state law provided no remedy for recovery of her losses and that the state law estopped her from securing return or recovery from the property involved and this involves a violation by the State of California of the 13th and 14th amendments to the U. S. Constitution.

2. The dismissal of the action under C.C.P. 581a, which has thus far prevented trial upon the merits, violates the recognized rule that federal law shall apply as to federal matters, and thereby deprives this appellant of access to the courts, confirms the constitutionally prohibited act of a state taking liberty and property without due process of law, impairs the obligations of contract by making it possible for the state to avoid its obligation as the maker of the contract, confirms the taking of plaintiff's property and fixing its title in a community of holders without just compensation, denies equal protection of the laws by refusing to recognize that the reason for the delay in issuance was not one contemplated by C.C.P. 581a, and denies to this appellant equal protection of the laws in refusing to recog-

nize proper and equitable legal defenses to which she was entitled in resisting the motion.

The effect of the dismissal under C.C.P. 581a and the judicial acts by which the upholding of C.C.P. 581a was accomplished by the courts, in this particular case, is to deny to this appellant due process of law, equal protection of the laws, and immunities and privileges guaranteed by the 14th amendment to the U. S. Constitution.

It would appear that these effects from the application of C.C.P. 581a to the facts of this case on appeal, subordinates Amendments 13 and 14 of the U. S. Constitution to the said state statute and that this and the deprivation of rights shown justifies the consideration of the U. S. Supreme Court with a view to protecting the rights of this appellant as guaranteed by the U. S. Constitution.

Respectfully submitted,

CLAUDIA WALKER

Appellant in Propria Persona

(Appendices Follow)

Appendix

In the Superior Court of the State of California in and for the County of Sacramento

No. 87355

CLAUDIA WALKER, as Administratrix of the Estate of Mrs. Lillie Maybelle Waller Walker, Deceased,
Plaintiff.

vs.

STATE OF CALIFORNIA, GOODWIN J. KNIGHT, as Governor of the State of California, EDMUND G. BROWN, as Attorney General of the State of California, STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA, JOHN M. PEIRCE, as Chairman of the State Board of Control of the State of California, ROBERT KIRKWOOD and ARTHUR F. HENNING, as Members of the State Board of Control of the State of California,
Defendants.

OPINION

Defendant has moved for a dismissal of the action on the ground that summons was not issued within one year after the filing of the complaint as provided by section 581a of the Code of Civil Procedure of the State of California.

The complaint was filed July 26, 1951; plaintiff, Lillie Maybelle Walker died on July 15, 1952; October 26, 1953, the present plaintiff, Claudia Walker, as administratrix of the estate of Lillie Maybelle Waller Walker, was substituted as plaintiff; October 29, 1953, amended complaint was filed and summons issued; November 5th, a motion to

dismiss was filed by defendants, by virtue of the provisions of the section of the C.C.P. stated above.

The amended complaint is quite long, and the main feature of the pleading upon which reliance seems to be predicated is to the effect that a judge of the Superior Court had ordered an adoption of the plaintiffs intestate, and she had thereby been disinherited and deprived of property she would otherwise have inherited or acquired, and she seeks damages by reason thereof. In an affidavit filed on her behalf as to the reason for not having had a summons issued by the plaintiff at the time the complaint was filed, or up to the time of her death, almost a year after the original action was commenced, it appears to be because she was an old woman, she had no attorney, and was saving up money to file a bond in the action. I have not gone into detail either as to the amended complaint, or as to the affidavit filed as an excuse or reason for not having had summons issued within a year after the filing of the complaint, as it is not deemed important. A casual reading of the amended complaint will show that it states no cause of action against the State of California, or the Governor or other officials therein named as defendants; neither are the statements set forth in the affidavit filed sufficient to excuse the failure to have a summons issued according to the provisions of section 581a of the C.C.P., unless it is to be held that the fact the original plaintiff passed away before the year stated in said section had elapsed, extended the right to have a summons issued after that period.

Neither side has pointed to any statute or provision which permits an extension of the period so provided by section 581a of the said C.C.P. It may cast some light on the subject to look for a moment at the history of said section. It will be observed that the section of the code uses the word

"must" in stating that the action be dismissed, "unless summons shall have been issued within one year . . ." In People vs. Southern Pacific Co. et al, 17 C.A. 2d, 257, the Court reviewed the history of said section, pointing out that in 1907 the previous section used the word "shall". After noting different changes in that regard, the Court states that: "Although prior to 1901 the important word in this section was "shall" and not "must", the provisions even then were considered mandatory, for in 1896 we find Mr. Justice Temple saying in *Vrooman v. Li Po Tai*, 113 Cal. 302, at page 305 (45 Pac. 470): "This provision is very sweeping, and is expressly made applicable to pending suits. It is prohibitory, otherwise it would have no force at all. The courts were already authorized and required to dismiss suits upon motion where there had been culpable failure to prosecute. To hold this statute directory would, therefore, be to repeal it. Then the language could hardly indicate more plainly the intent that it shall be mandatory. Besides being absolute in form, it contains a prohibitory clause—"and no further proceedings shall be had therein." Such a negative cannot be, and never has been, considered as directory merely."

It is true, as stated by counsel for plaintiff, that there is no California case in point, although there is dicta in the case of Witter vs. Phelps, 163 Cal. 655; involving the question of delay in serving a summons, the Court, in the course of the option stated: ". . . In 1889 subdivision 7 was added to section 581 of the Code of Civil Procedure. (Stat. 1889 p. 398). The effect of the subdivision, as amended, (Stats. 1895, p. 31) and, in substance, re-enacted in 1907 as section 581a (Stats. 1907 p. 712) was to make it mandatory upon the court to dismiss where the summons had not been issued

within one year, or served and returned within three years! (Citing a couple of cases.)

According to the annotation in 167 A.L.R. p. 1060, there are two cases in Colorado which are in point. The reports themselves are not available to me at this time, but I refer to the above book and page as to what is said with regard to them. The two cases are Coombs vs. Parish, 6 Colo. 296; reaffirmed and applied in Steves vs. Carson, 2 Colo. App. 200, 30 Pac. 1101. The Colorado statute and that of California were the same, except California gives one year after commencement of the action to have summons issued, and Colorado allows but thirty days. The annotation states that in the cases cited the action was dismissed.

In the case of Dupuy vs. Shear, et al, 29 Cal. p. 238, in the syllabus it is stated that since the amendment of 1860 to the 123 section of the Practice Act, the Clerk is not authorized to issue a summons in an action, without an order of the Court, after the expiration of one year after the filing of the complaint. The Court stated:

"In 1860 section twenty-three was amended so as to read as follows: "And at any time within one year after the filing of the same the plaintiff may have a summons issued." These are the only provisions prescribing the mode of commencing suits and authorizing the issue of a summons. The summons authorized by section twenty-three to be issued, whether one or more, issues as a matter of course upon application to the Clerk. The party, upon filing his complaint and paying the costs, has a right to it, and no order by the Court or Judge is required. But the section was amended in 1860, and limited the time within which the summons provided for in that and the preceding section could be issued, to one year after the filing of the complaint. This is an amendment which merely affects the mode of pro-

ceeding, and all proceedings thereafter taken must be in accordance with that provision. A summons thereafter to be issued as a matter of absolute right, must issue by virtue of the provisions of the section as amended, because there is no other provision authorizing the issue of any summons. Conceding then, that under the provisions of sections twenty-two and twenty-three, a party may have more than one summons issued on the same complaint, they must, since the amendment, all be issued within the time prescribed, for if he relies upon the provisions of that section to establish his right, he cannot have more than these provisions authorize. The summons vacated was issued long after the time limited, and, therefore, not in pursuance of its provisions."

There is a long notation found in 167 A.L.R. commencing at page 1058, but we are especially concerned with that commencing on page 1095, which covers the point so far as California is concerned. It will be seen that the annotator takes the view, under the many authorities cited by him, that the dismissal is mandatory. Thus it is there stated, referring to section 581a of the C.C.P.: "In construing this enactment the California Courts have laid down a fundamental principle that insofar as there is a delay of one year or more between the filing of the complaint and the issuance of a summons, or a delay of three years or more between the filing of a complaint and a service of summons issued thereon, the statute is mandatory and the Court is under the positive duty of dismissing the action."

We may presume that the legislature has been familiar with the mandatory provisions of section 581a, so far as the phases thereof are herein considered; but no amendment has been made thereto during the years, except as noted in the

above opinion. This is a significant fact which must be considered in arriving at the conclusion to be reached herein.

From the foregoing it appears clear to this Court that there is merit in the motion of the defendants, and that the action must be dismissed. Defendant will prepare an order accordingly.

Dated: April 23, 1954.

/s/ MALCOLM C. GLENN
Judge of the Superior Court.

Endorsed
Filed Apr 23 1954
C. C. LaRue, Clerk
By /s/ CHARLES L. FISCHER, *Deputy*

In the Superior Court of the State of California
In and for the County of Sacramento

No. 87355

CLAUDIA WALKER, as Administratrix of the Estate of Mrs. Lillie Maybelle Waller Walker, Deceased,
Plaintiff,

vs.

STATE OF CALIFORNIA, GOODWIN J. KNIGHT, as Governor of the State of California, EDMUND G. BROWN, as Attorney General of the State of California, STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA, JOHN M. PEIRCE, as Chairman of the State Board of Control of the State of California, ROBERT KIRKWOOD and ARTHUR F. HENNING, as Members of the State Board of Control of the State of California,
Defendants.

JUDGMENT AND ORDER OF DISMISSAL

The defendants, State of California, Goodwin J. Knight, as Governor of the State of California, Edmund G. Brown, as Attorney General of the State of California, State Board of Control of the State of California, John M. Peirce, as Chairman of the State Board of Control of the State of California, Robert Kirkwood and Arthur F. Henning, as Members of the State Board of Control of the State of California, having appeared for the sole purpose of making a motion to dismiss and to question the jurisdiction of the court, the motion to dismiss being made on the ground that summons was not issued within one year after the commencement of the action as required by Code of Civil Procedure section

581a, and the motion having come on regularly to be heard and having been argued and submitted. The court having examined all of the records on file in the above entitled cause and having been fully advised in the premises and having found that due notice of motion to dismiss was served upon the plaintiff and that summons in said action was not issued within one year after the commencement of said action and none of the defedants named in said action have appeared except for the purpose of seeking to dismiss said action and that none of the defendants have waived the provisions of section 581a of the Code of Civil Procedure, and good cause appearing therefor and the court having granted the motion to dismiss, said action as to all defendants named herein,

NOW, THEREFORE, IT IS ORDERD, ADJUDGED AND DECREED, that the above entitled action be and the same is hereby, dismissed as to all of the defendants named in said action.

Dated: April 29th, 1954.

MALCOLM C. GLENN /s/
Judge of the Superior Court

Attest:
C. C. LaRue, Clerk
By CHARLES L. FISCHER /s/
Deputy Clerk

Endorsed
Filed Apr. 29 1954
C. C. LaRue, Clerk
By /s/ CHARLES L. FISCHER, Deputy

No. 87355 Judg't Entered Apr 29 1954 In Judgment Book 124; Page 268 at 4:25 o'clock P.M. Judgment Roll Filed Apr. 29, 1954 C. C. LaRue, Clerk
By /s/ E. CATILLER, *Deputy*

In the District Court of Appeal of the State of California

Third Appellate District

3 Civil 8698

CLAUDIA WALKER, as Administratrix of the Estate of Mrs. Lillie Maybelle Waller Walker, Deceased,
Plaintiff and Appellant,

vs.

STATE OF CALIFORNIA, GOODWIN J. KNIGHT, as Governor of the State of California, EDMUND G. BROWN, as Attorney General of the State of California, STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA, JOHN M. PEIRCE, as Chairman of the State Board of Control of the State of California, ROBERT KIRKWOOD and ARTHUR F. HENNING, as Members of the State Board of Control of the State of California,
Defendants and Respondents.

DECISION

This is an appeal from a judgment dismissing the action for failure to have summons issued within one year after the filing of the complaint, as required by section 581a of the Code of Civil Procedure.

On July 26, 1951, appellant's mother commenced this action to recover damages from the state and certain of its officials on the ground that in 1880 the then judge of the Superior Court of Solano County, acting as the agent of the state, fraudulently conspired to, and did, permit her adoption and thereby deprived her of her vested interest in her deceased mother's estate. Appellant's mother alleged that at the time of the adoption she was only two years old,

that no guardian ad litem was appointed to represent her interests and that the required publication of the notice of the proceedings was not made. It was further alleged that the superior court judge, with notice of the vested property rights of appellant's mother, fraudulently permitted her adoption and thereby deprived her of her heritage in violation of her constitutional rights. Appellant's mother sought not only damages for the alleged taking of her property without due process of law but also for personal injuries alleged to have been suffered due to the negligence of her adopting parents. Appellant's mother died July 15, 1952. The summons had not been issued. On October 23, 1953, appellant was appointed the administratrix of her mother's estate and on October 26, 1953, she was substituted as the plaintiff in the present action. She filed an amended complaint wherein she alleged that, due to circumstances beyond her mother's control, she had been unable to file the statutory $500 undertaking required in an action against the state; and that up to the filing of the amended complaint appellant herself had suffered the same disability. (Gov. Code, Sec 16047). On October 29, 1953, appellant filed the required statutory bond and had summons issued. Service thereof on respondents was completed on November 2, 1953. On November 5, 1953, respondents filed a notice of motion to dismiss on the ground that the summons was not issued within one year after the filing of the complaint. Section 581a of the Code of Civil Procedure provides:

"No action heretofore or hereafter commenced shall be further prosecuted, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced must be dismissed by the court in which the same shall have been commenced, on its own motion, or on motion of any party interested therein, . . ., unless summons shall have

issued within one year, . . . But all such actions may be prosecuted, if appearance has been made by the defendant or defendants, within said three years in the same manner as if summons had been issued and served; . . ."

Respondent's motion to dismiss was granted on April 23, 1954, and a judgment of dismissal entered. Upon this appeal from such judgment, appellant strenuously argues that the trial court abused its discretion and deprived her of her constitutional rights by dismissing the action. She complains that the trial court did not give proper consideration to the facts that illness, financial difficulties, procrastination of counsel, and other matters prevented an earlier filing of the required statutory bond and caused the delay in issuance of summons. She also maintains that the one-year period in which a summons must be issued was extend by the death of her mother, by some of the respondents' absences from the state during the period, and by the respondents making the motion to dismiss. She also claims the motion constituted a general appearance within the meaning of the exception contained in section 581a of the Code of Civil Procedure.

Respondents did not make a general appearance. Their notice of motion to dismiss for noncompliance with section 581a expressly stated that it was made for "no other purpose, and without submitting themselves to the jurisdiction of this court." They did not ask any extension of time to plead. However, the following did occur. (1) We quote from the order of the court: ". . . hearing on said motion to quash was continued at the request of the plaintiff . . . and that defendants' time for pleading to the complaint will expire prior to hearing of said motion, the court of its own motion, and not on the motion of any of the parties . . . hereby extends the time to plead to the complaint . . ."

Under these circumstances, extending the time to plead did not change the special appearance into a general appearance upon the part of respondents. (Brock v. Fouchy, 76 Cal. App. 2d 363, 369-370 (172 P.2d 945).)

Assuming, as claimed by appellant, that some of the resondents were absent from the state during portions of the time between the filing of the complaint and the issuance of summons, this would not excuse the failure to have the summons issued during the statutory time therefor provided. (2) It is the running of time for service, and not the running of the time for issuance of the summons, which is tolled by a defendant's departure from the state. (Code Civ. Proc., Sec. 581a).

(3) None of the reasons advanced by appellant for the failure to have summons issued promptly, such as the illness and death of her mother, lack of funds, and inability to obtain diligent counsel, can serve to prevent dismissal of the action. The statute is mandatory. (Gonsalves v. Bank of America, 16 Cal. 2d 169, 172 (105 P.2d 118); Schultz v. Superior Court, 69 Cal App. 2d 530, 532-533 (159 P.2d 417); Schultz v. Schultz, 70 Cal. App. 2d 293, 296-299 (161 P.2d 36).) The trial court had no discretion in the matter. By statutory command, it was compelled to dismiss the action.

The judgment is affirmed.

VAN DYKE, P. J.

Peek, J., and Schottky, J. concurred.

(Endorsed): Filed June 7, 1956

..... Clerk, ... Deputy.

Office - Supreme Court, U.S.
FILED
NOV 12 1956
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 508

CLAUDIA WALKER, as Administratrix of the Estate of Mrs. Lillie Maybelle Waller Walker, Deceased,

Appellant,

vs.

STATE OF CALIFORNIA, GOODWIN J. KNIGHT, as Governor of the State of California, EDMUND G. BROWN, as Attorney General of the State of California, STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA, JOHN M. PEIRCE, as Chairman of the State Board of Control of the State of California, ROBERT KIRKWOOD and ARTHUR F. HENNING, as Members of the State Board of Control of the State of California,

Appellees.

MOTION TO DISMISS

Appeal From the District Court of Appeal of the State of California

EDMUND G. BROWN
Attorney General of California

WILLIAM J. POWER
Deputy Attorney General

Attorneys for Appellees

printed in CALIFORNIA STATE PRINTING OFFICE

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 508

CLAUDIA WALKER, as Administratrix of the Estate of Mrs. Lillie Maybelle Waller Walker, Deceased,

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Appellees.

I. MOTION TO DISMISS

Appeal From the District Court of Appeal of the State of California

Appellees above named pursuant to Rule 16 of the revised rules of the Supreme Court of the United States, move to dismiss appeal in the above entitled case on the ground:

That it does not present a federal question.

II. STATEMENT OF THE CASE

Appellant's mother, Lillie Maybelle Walker, instituted this proceeding to recover damages from the State and a number of its officers for certain losses that were alleged to have been occasioned by her adoption in 1880. As a result of the adoption it was said that Lillie Maybelle Walker was deprived of participating in her deceased mother's estate and suffered various indignities. It was alleged that the State was responsible for her losses in that the judge who authorized the adoption was an agent of the State, that the adoption was part of a fraudulent conspiracy and that the judge was a party to the conspiracy. Suit was filed by Lillie Maybelle Walker on July 26, 1951. Lillie Maybelle Walker died on July 15, 1952, and at that time summons had not been issued. On October 23d, appellant, Claudia Walker, was appointed administratrix of the estate of Lillie Maybelle Walker. On October 26, 1953, appellant was substituted as plaintiff in the action; an amended complaint was filed and on October 29, 1953, summons was issued. Service of summons was made on the several defendants between October 29 and November 2, 1953. On November 5, 1953, appellees filed Notice of Motion to Dismiss, basing their motion on the ground that summons was not issued within one year after filing of the complaint as

required by Section 581a of the California Code of Civil Procedure.*

Pursuant to the motion of appellees, the action was dismissed and a judgment of dismissal was entered. This judgment was affirmed by the District Court of Appeal. (142 Advance California Appellate Reports 133, 297 Pac. 2d 1026.) Appellant's petition for hearing by the California Supreme Court was denied and an appeal was prosecuted to this court.

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* No action heretofore or hereafter commenced shall be further prosecuted, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced must be dismissed by the court in which the same shall have been commenced, on its own motion, or on motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have issued within one year, and all such actions must be in like manner dismissed, unless the summons shall be served and return thereon made within three years after the commencement of said action, except where the parties have filed a stipulation in writing that the time may be extended. But all such actions may be prosecuted, if appearance has been made by the defendant or defendants, within said three years in the same manner as if summons had been issued and served; provided, that, except in actions to partition or to recover possession of, or to enforce a lien upon, or to determine conflicting claims to, real or personal property, no dismissal shall be had under this section as to any defendant because of the failure to serve summons on him during his absence from the State, or while he has secreted himself within the State to prevent the service of summons on him.

All actions, heretofore or hereafter commenced, must be dismissed by the court in which the same may be pending, on its own motion, or on the motion of any party interested therein, if summons has been served, and no answer has been filed, if plaintiff fails, or has failed, to have judgment entered within three years after service of summons, except where the parties have filed a stipulation in writing that the time may be extended.

III. THERE IS NO FEDERAL QUESTION PRESENTED BY THIS APPEAL

A. Section 581a of the California Code of Civil Procedure Is Not Rendered Unconstitutional by the Fourteenth Amendment

It is somewhat difficult to ascertain just what federally protected right appellant relies on in this appeal. Seemingly the only possible federal question would be whether a state statute which requires summons to be issued within one year after filing the complaint is violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States. We shall deal with appellant's jurisdictional statement as if such were the case.

Assuming that the alleged fraudulent adoption gave rise to a cause of action against the State the manner in which that cause of action need be prosecuted would be subject to reasonable state legislation (*Chisolm* v. *Gilmer,* 299 U. S. 99; 81 L. Ed. 63; 57 S. Ct. 65; *O'Neil* v. *Northern Colorado Irrigation Company,* 242 U. S. 20; 61 L. Ed. 23; 37 S. Ct. 7). Thus a statute of limitations requiring suit on that cause of action to be brought within a certain time, provided that time was reasonable, would violate no provisions of the Federal Constitution. (*Atchafalaya Land Company* v. *Williams Cypress Company,* 258 U. S. 190; 66 L. Ed. 559, 42 S. Ct. 284; *O'Neil* v. *Northern Colorado Irrigation Company,* 242 U. S. 20.)

Code of Civil Procedure Section 581a being a procedural statute, an attack on its constitutionality

could succeed only if it were shown that the statute was unreasonable. Appellant, however, makes no attack upon the reasonableness of the section; apparently it is her position that any state statute that prevents successful prosecution of her suit is violative of the Fourteenth Amendment for the reason that it prevents the righting of a supposed earlier violation of the Fourteenth Amendment. Though not cited in her jurisdictional statement, appellant does, at page 51, of the opening brief filed with the California District Court of Appeal, make mention of *Holmberg* v. *Armbrecht,* 327 U. S. 392 and apparently from *Holmberg* case develops the theory above mentioned, i.e., that because she claims the protection of the United States Constitution she is exempt from state procedural statutes. The *Holmberg* case was concerned with a suit brought in the federal court under a federal statute imposing liability on stockholders of land banks and it was found that the state statute of limitations was inapplicable. In the present instance appellant brought suit in a state court and whatever cause of action, if any, that she has must be founded on state law. There is no federal statute imposing civil liability on the State of California for the erroneous or improper acts of superior court judges in adoption matters. The *Holmberg* case did not involve a question of constitutional law, it was concerned with the choice of the proper statute of limitations and it most certainly does not stand for the proposition that a state statute terminating

litigation is necessarily unconstitutional if the plaintiff claims that he is seeking to vindicate substantive rights that enjoy constitutional protection.

B. The Thirteenth Amendment Is Not Involved in This Proceeding

Appellant's charges that Section 581a of the Code of Civil Procedure is violative of the Thirteenth Amendment of the Constitution of the United States can be disposed of simply by saying that no issue of slavery is presented by this case.

C. This Appeal Is Not Concerned With the Right to Bring a Pauper's Action

At pages 11 and 12 of her jurisdictional statement appellant makes the statement that the right to bring a pauper's action is protected by federal law. Whether or not such is the case is not at issue; no application was ever made to bring this action in forma pauperis nor have the finances of appellant or her predecessor ever been examined.

D. Comment on Certain Matters Appearing in Appellant's Statement

Appellant has made statements as to what was done by the Board of Control of the State of California, as to the law of California in 1880, and has charged that the adoption of her mother was conceived in fraud and has made other accusations.

As the only issue before the court is the constitutionality of Code of Civil Procedure Section 581a

there is no need to discuss the matters mentioned or to make detailed denials. Silence on these matters is not indicative of concurring in what appellant has said. We have passed over such matters for the reason that they are immaterial; the truth or falsity of these statements has no bearing on the question before the court.

CONCLUSION

It is respectfully submitted that the appellant has not presented any substantial federal question for the decision of this court and that the appeal should be dismissed.

Respectfully submitted

EDMUND G. BROWN
Attorney General

WILLIAM J. POWER
Deputy Attorney General

Attorneys for Appellees

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FILED
DEC 10 1956
JOHN T. FEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 508

CLAUDIA WALKER, AS ADMINISTRATRIX OF THE ESTATE OF MRS. LILLIE MAYBELLE WALKER WALKER, DECEASED,
Appellant,

vs.

STATE OF CALIFORNIA, ET AL.

APPEAL FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS

CLAUDIA WALKER, *pro se.*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 508

CLAUDIA WALKER, AS ADMINISTRATRIX OF THE ESTATE OF MRS. LILLIE MAYBELLE WALLER WALKER, DECEASED,
Appellant,

vs.

STATE OF CALIFORNIA, GOODWIN J. KNIGHT, AS GOVERNOR OF THE STATE OF CALIFORNIA, EDMUND G. BROWN, AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA, JOHN M. PEIRCE, AS CHAIRMAN OF THE STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA, ROBERT KIRKWOOD AND ARTHUR F. HENNING, AS MEMBERS OF THE STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA,
Appellees

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

Federal Questions Are Presented by This Appeal—Answering Sec. I of Motion to Dismiss

Appellant denies appellees' statement that this appeal does not present a Federal question and that it does not present any substantial Federal question for decision by this Court.

It is appellant's belief that the decision of this Honorable Court in this case is of vital importance to a vast group of American citizens, whose Constitutional Rights are consistently violated as a matter of course. This group includes a vast army of children, some legitimate, many more illegitimate, who are adopted in the 48 states of this Union every year.

While it is the object of adoption to give to adoptees a legal relationship to adopting parents and thereby to provide them with certain legal rights growing out of the relationship, including support and education—it is a fact little considered that adoption strips the adoptee of his natural legal relationships and of his legal rights existing by reason of his natural relationships.

The case of *Sewall* v. *Roberts,* 115 Mass. 262, holds that an adoption is Constitutional, unless it violates vested rights.

When the State, in an adoption proceeding, acts by virtue of legislative authority, then the Judge (*In re Stevens,* 83 Cal. 322 at 331 [1]) acts as agent of the State and the State is responsible for his actions. (See 1 Cal. Jur. 11 page 428; *In re Renton's Est.,* 3 Cof. 519, 4 Cal. D. 433) The adoption constitutes a third-party contract (*In re Johnson,* 98 Cal. 531), therefore the State as the approving party is responsible for losses caused to the adoptee by the contract. Since the State is the party giving final validity to the contract, (*In re Summer's Est.,* 51 C. A. 2d 39) its action in taking from the adoptee property without compensation by the act of adoption (in a case where title to the adoptee's property is subsequently vested by adverse possession in a com-

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[1] (*In re Stevens,* supra) "The county judge has been selected by the legislature as the officer to be charged with the function of solemnizing the ceremony of adoption but his duties in the exercise of that function are no more of a judicial character than would be the same duties if performed before a notary public."

munity of holders which bars recovery by the adoptee) constitutes a taking by the State in the nature of eminent domain. If the State by the taking of the adoptee's property and property rights reduces the adoptee to a state of penury, the resulting hardship is equivalent to the deprivation of personal liberty.

These acts by the State constitute violations of the 13th and 14th Amendments to the U. S. Constitution and in themselves constitute Federal questions.

It must be conceded that, under such facts and circumstances, the adoptee is entitled to restitution and damages for the losses caused by the deprivation of civil rights without due process of law and by the adoption contract, as well as just compensation for property taken, and that for this purpose the adoptee is entitled to have access to the Courts to determine his rights (Est. of Pillsbury, 175 Cal. 454)[2] and the restitution to which he is entitled.

The right to restitution for losses and the right of access to the Courts are federally protected rights. (J. S. 9)

These are the skeletal facts of the instant case, and the Constitutional issues here are so fundamental that it would appear that original plaintiff might have filed a class action seeking declaratory relief in the Federal Courts.

Original plaintiff, at the age of 70, discovered in 1949 that she had been so deprived of her property rights and property and personal liberty in 1880, when she was 2 years old, at the time of her adoption, without due process of law. She filed Claim 4534 (AOB 2, 4; ACB 3) with the State Board of Control and, when it was denied on the basis that the State was not liable for the acts of Judges acting in a Judi-

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[2](Est. of *Pillsbury*, supra) "If a decree of adoption has been procured which operates against the true interests of the minor and thereby works a fraud upon him, a court of equity will vacate the decree upon proper application made for that purpose."

cial capacity, filed this action in the Sacramento County Superior Court.

Appellant's mother filed the action on July 26, 1951, as authorized by Government Code Section 16041 but, due to financial disabilities of herself and this appellant on whom she relied for partial support, she was unable to post the $500. bond (AOB 9, 14-20; ACB 4, 37-8; PR 4-5; PHSCt 3) required by Government Code Section 16047. This situation was taken up with the Judge of the Sacramento County Superior Court in chambers at the time of the filing of the complaint. The Judge ruled that summons could not issue until the bond was posted and further that, because a bond was required to maintain the action, the plaintiff could not proceed in *forma pauperis* (JS 10 because the bond could not be posted in such a proceeding. The Judge also ruled that the complaint could be filed and that plaintiff could delay posting bond until she had funds available, so long as the appellees here did not request dismissal for failure to post the bond and that, if they did so, the Court would hold a hearing and plaintiff would then be given the opportunity to post the bond at that time.

The situation of financial stringency that confronted original plaintiff and this appellant and the involvement therein of the State of California is fully set out in AOB 6-8, 36-39; ACB 8-12, 47-50; PR 13-16; PHSCt 6, filed with the District Court of Appeal.

After the filing of the complaint on July 26, 1951, original plaintiff and appellant proceeded to save the funds necessary to post the bond and to seek an attorney. Original plaintiff died on July 15, 1952, (AOB 10, 39-43; ACB 33-5; PR 16; PHSCt 3) and the money saved for the bond was used for her funeral. This appellant again consulted with the Judge of the Sacramento County Superior Court, who repeated the prior rulings that summons could not issue

until bond was posted and that the action could not be prosecuted in forma pauperis because the bond requirement could not be satisfied in such a proceeding and instructed her to file the bond as soon as she could, preferably within six months of her mother's death.

Within six months of original plaintiff's death, this appellant secured Attorney Gordon H. Winton, Jr. of Merced, California, who said he would proceed to secure administration and substitution and file an amended complaint and post bond and issue summons before January 15, 1953. He misrepresented both facts and law to this appellant and by his own actions caused a delay which was beyond the control of this appellant during the period from January to October, 1953. AOB 11-12, 45-48; ACB 39-44) These facts are fully set out in the Affidavit concerning the withdrawal of Attorney Winton, which is a part of the Transcript, and the statements therein made by this appellant are unrefuted by the said attorney on whom the affidavit was served before filing. Appellant pleaded in the California Courts that she was entitled to relief from the effects of the delay caused by the actions of her attorney.

On October 23, 1953, this appellant in cooperation with said Attorney Winton was appointed as administratrix of the estate of original plaintiff, in which this is the only asset potential. On October 26, 1953, she was substituted as party plaintiff. On October 29, 1953, she filed an amended complaint (AOB 49-50; ACB 36; PR 5-7; PHSCt 4-5), posted bond, and had summons issued which was served and returned in several days.

The action was then stopped cold by a purported special appearance by the appellees who filed Motion to Dismiss on the authority of CCP 581a on the ground that summons had not been issued within one year after filing the complaint. The California Courts arbitrarily and wilfully ignored the

facts of the case and the legal defenses. Appellant contends that the effect of the decision is to deny to this appellant, as the successor of original plaintiff, due process of law, privileges and immunities and equal protection of the laws, as outlined in JS 13-15, and that these constitute Federal questions.

Answering Section III D of Motion to Dismiss

Appellees seem to imply that appellant's statements concerning the facts of the case and defenses submitted in the California Court proceedings are untrue. Appellant submits that heretofore in the California Court proceedings appellees have made no specific denials of specific charges made by this appellant and that therefore this Court has the right to consider the statements made by this appellant to be true.

Appellees state that the only issue before the Court is the Constitutionality of CCP 581a. Appellant submits that her appeal is based on the fact that the validity of the said statute is drawn in question as being repugnant to and in conflict with the U. S. Constitution, so far as its application to the facts and circumstances of the instant case are concerned.

Answering Sec. III C of Motion to Dismiss

Appellees state that appellant makes the statement that the right to bring a pauper's action is protected by Federal law and that this is not an issue, since no application was made to bring this action in forma pauperis.

The pertinent fact here is the reason why this action was not filed in forma pauperis, which is a federally protected right—namely, that the Judge of the Sacramento County Superior Court at the time of allowing the filing of the complaint ruled that the action could not be prosecuted in forma

pauperis because the $500. bond required by Government Code Section 16047 could not be posted in such a proceeding. Appellant contends that the denial of this privilege is a denial of due process and constitutes a Federal question.

Appellees state that the finances of appellant and her predecessor have never been examined. This statement is untrue. At the hearings on Claim 4534, the State Board of Control inquired into original plaintiff's financial situation and were informed that she was receiving the old age pension, which had been awarded to her in 1943 and at which time the State of California had made an exhaustive investigation into her financial condition. Also, the State Board of Control in 1948, when it awarded to this appellant the sum of $1,440. on the recommendation of the Ways and Means Committee of the California State Legislature, was fully informed as to the desperate financial circumstances of this appellant and her mother by reason of the illegal actions of the State of California. Furthermore, to support the contention of financial stringency of original plaintiff and this appellant, this appellant presented (ACB 9-12) a copy of the application for old age assistance and other pertinent documents to the District Court of Appeal.

Answering Sec. III B of Motion to Dismiss

Appellees state that the 13th Amendment is not in the case, because no issue of slavery is presented. Appellant submits that appellees' statement does not constitute a ground for the dismissal of this appeal and that the allegations of the amended complaint that by reason of the adoption original plaintiff was subjected to a state of involuntary servitude is a matter of fact for determination by the trial court or the trial jury in a trial upon the merits.

Answering Sec. II of Motion to Dismiss

Reviewing appellees' statement of the case, which is incomplete, appellant has the following comments:

Appellant admits that original plaintiff filed an action against the State of California and named the Governor and Attorney General on whom service of summons is required by Government Code Section 16049, and named also the officials of the State Board of Control which processed the claim.

Appellees state that as a result of the adoption it was said that appellant's mother was deprived of participating in her deceased mother's estate and suffered various indignities. The amended complaint presented in the Transcript states that original plaintiff was deprived of her share of her deceased mother's estate to which she succeeded by operation of law at her mother's death, and that additionally she was deprived of her vested right to support and education from the family property and of her right to a probate homestead in the farm homestead which would have vested title in her to a share of the property, and that original plaintiff was subjected to involuntary servitude and suffered two serious accidents resulting in blindness in one eye and a broken coccyx, and that the deprivation of liberty and property and property rights due to actions by the State of California, without due process of law, constituted violations of the 13th and 14th Amendments to the U. S. Constitution. This is an entirely different set of facts than recited by appellees.

It is true that the amended complaint alleges that the State was responsible for the losses, that the Judge acted as agent for the State, that the adoption contract was part of a fraudulent conspiracy and that the Judge was a party to the conspiracy. They fail to state that the amended complaint alleges that Claim 4534 filed with the State Board of

Control was based on original plaintiff's discovery of fraud in 1949 (AOB 2; ACB 27).

It is true that appellant's mother filed the action on July 26, 1951, and that she died on July 15, 1952, and up to that time summons had not issued. However, appellees omit the material fact that Government Code Section 16047 required the posting of a $500. bond at the time of filing the complaint, which was not posted due to the financial inability of original plaintiff to post the bond.

It is true that on October 23, 1953, appellant was appointed as administratrix, and was substituted on October 26, 1953, and that she filed an amended complaint on October 29, 1953. Appellees fail to mention, however, that at the time of filing the amended complaint, appellant posted the required $500. bond and at that time had summons issued. It was however held that issuance of summons at that time, which was served on the appellees here, did not prevent the dismissal of the action.

It is true that summons was served on appellees between October 29 and November 2, 1953, and that on November 5, 1953, appellees filed Motion to Dismiss under CCP 581a on the ground that summons was not issued within one year after filing of the original complaint. Appellees fail to state that they did not move to quash the service of summons (AOB 21; ACB 16; PR 19; PHSCt 7-8); or that they defaulted in the action and that the Court relieved them of their default after it had occurred (AOB 22; ACB 5-6; PR 20; PHSCt 9).

It is true that a Judgment of Dismissal was entered and that the Judgment was affirmed by the District Court of Appeal. Appellees fail to state that this appellant filed a Petition for Rehearing with the District Court of Appeal which was denied, which preceded the filing of the Petition for Hearing by the Supreme Court of the State of California.

Answering Sec. III A of Motion to Dismiss

Appellees state that Section 581a of the California Code of Civil Procedure is not rendered unconstitutional by the Fourteenth Amendment.

Appellees state in the first paragraph that it is difficult to ascertain what federally protected right appellant relies on in this appeal and that seemingly the only possible Federal question would be whether a state statute which requires summons to be issued within one year after filing a complaint is violative of the due process clause of the 14th Amendment, and that they shall deal with the Jurisdictional Statement on that presumption.

Appellant submits that this is an incorrect interpretation of the Jurisdictional Statement, as shown by the following:

(a) In JS (item 1) 5, appellant states that the amended complaint recites violations of the civil rights of original plaintiff by the State, including the taking of vested property rights, in violation of the 13th and 14th Amendments to the U. S. Constitution.

(b) In JS (item 4) 7-8, appellant presents five citations holding that a question arising under the Federal Constitution may be appealed to the U. S. Supreme Court and the Court will look to the necessary effect of the state decision.

(c) In JS 13-15, appellant has outlined her statement of the effects of the decision in applying CCP 581a to the facts and circumstances of this case.

(d) In JS 8-10, appellant has presented citations which she believes support her contention that the forced application by the California Courts of the said statute to the facts and circumstances of this particular case is in violation of various Constitutionally protected rights and thereby presents Federal questions.

(c) In JS 10-12, appellant has presented citations which support her contention that the validity of CCP 581a as applied to this particular case, involving matters arising from violation of the U. S. Constitution, was drawn in question.

Appellees in the second paragraph state that assuming the alleged fraudulent adoption gave rise to a cause of action against the State, the manner in which that cause of action need be prosecuted would be subject to reasonable state legislation and that a statute of limitations requiring suit on that cause of action to be brought within a certain time provided the time was reasonable would violate no provisions of the Federal Constitution. They cite:

Atchafalaya Land Co. v. *Williams Cypress Co.*, 258 U.S. 190
Chisholm v. *Gilmer*, 299 U.S. 99
O'Neil v. *Northern Colorado Irrigation Co.*, 242 U.S. 20

In *A. T. & S. F. Ry. Co.* v. *Rollaway*, 101 A.C.A. 869, it was held that " C. C. P. 581a is not a statute of limitations and as applied to suits for lack of prosecution both it and Rule 41-b Federal Rules of Civil Procedure are procedural and are not substantive."

In the Atchafalaya case, supra, it was held that a six-years statute of limitations requiring the commencement of an action to vacate or annul any land patent within six years of its issuance or within six years from the passage of the act, did not violate the due process or contract clauses of the U. S. Constitution.

In the Chisholm case, supra, it was held that Federal Courts must adhere to the Conformity Act and must follow local practice, unless some other Act of Congress creating an exception to the general duty of conformity has declared a special rule. The Chisholm case cites *Iowa Central R. Co.*

v. *Iowa*, 160 U.S. 389, in which it was held: "The Constitution of the United States does not attempt to make a choice between one method and another provided only that the method "gives reasonable notice and afterwards fair opportunity to be heard before the issues are decided."

The *O'Neil* case, *supra*, concerns a statute of limitations concerning the assertion of water rights.

Appellant contends that since CCP 581a is not a statute of limitations, that the above citations are not in point with reference to the instant case.

Appellees state in the third paragraph that appellant has made no attack on CCP 581a on the ground that the statute is unreasonable. It is not appellant's position that the statute is unreasonable, merely because it prevents successful prosecution of her suit, but it is appellant's position that— IN PREVENTING ANY PARTY FROM PROSECUTING AN ACTION AT LAW BY REASON OF DELAY IN ISSUANCE OF SUMMONS, BECAUSE OF FAILURE TO POST A BOND, DUE TO AN IMPOSSIBILITY TO COMPLY WITH THIS REQUIREMENT ON ACCOUNT OF POVERTY—the mandatory dismissal of the action deprives appellant of a Constitutional right to due process of law.

Appellees in the third paragraph cite *Holmberg* v. *Armbrecht*, 327 U. S. 392 as the basis of appellant's theory that a case involving Constitutional issues or Federal issues is not subject to the limitations of state statutes and imply that it is not in point.

At AOB 51, appellant stated that it was held in the *Holmberg* case, based on liability under a Federal statute, that the action was maintainable, being subject to the equitable rule of laches rather than the state statute of limitations, the point of similarity with the instant case being that in this case original plaintiff's rights as protected by the U. S. Constitution were violated by the affirmance of the adoption contract which resulted in losses to which she is

entitled to restitution from the State, which would seem to establish a basis of liability under Federal concepts.

Quoting from the *Holmberg* case, *supra,* at page 396-7, the Court said:

> "And so, a suit in equity may lie though a comparable cause of action at law would be barred. If want of due diligence by the plaintiff may make it unfair to pursue the defendant, fraudulent conduct on the part of the defendant may have prevented the plaintiff from being diligent and may make it unfair to bar appeal to equity because of mere lapse of time. . . . This equitable doctrine is read into every Federal statute of limitations. . . . It would be too incongruous to confine a federal right within the bare terms of a State statute of limitations unrelieved by the settled federal equitable doctrine as to fraud, when even a federal statute in the same terms would be given the mitigating construction required by that doctrine."

It would appear that where the fraudulent acts of the State of California (AOB 6-8; ACB 8-12; PR 14-16) brought about the financial ruination of original plaintiff and this appellant, that the appellees here should be barred from benefiting from CCP 581a because of delay in issuance of summons where the failure to issue summons was due to the financial inability to post the required bond at the time of filing the complaint.

Appellees also in the third paragraph raise the question that there is no federal statute imposing civil liability on the State of California for the erroneous or improper acts of Superior Court Judges in adoption matters. We are not here concerned with the question of whether civil liability of the State of California is imposed by federal statute or by state law, but we are concerned with the question of

whether the appellant is deprived of her right to be heard in the Courts of the State of California by a statute which, as applied to the facts and circumstances of this case, is repugnant to the U. S. Constitution.

Conclusion

It is respectfully submitted that appellant has shown in her Jurisdictional Statement and in this brief that this appeal does present substantial Federal questions which merit the consideration of this Honorable Court, and that the Motion to Dismiss filed by appellees is without merit and should be denied.

Respectfully submitted,

CLAUDIA WALKER, pro se.

(2867-0)

Reported below: 380 Pa. 48, 122 A. 2d 272.

No. 508. WALKER, ADMINISTRATRIX, *v.* CALIFORNIA ET AL. Appeal from the District Court of Appeal of California, Third Appellate District. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. Appellant *pro se*. *Edmund G. Brown*, Attorney General of Cali-

fornia, and *William J. Power*, Deputy Attorney General, for appellees. Reported below: 142 Cal. App. 2d 123, 297 P. 2d 1036.

No. 598. [illegible]